

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-110182
		C-110183
Plaintiff-Appellee,	:	TRIAL NOS. B-1005383
		B-1003691
vs.	:	
		<i>JUDGMENT ENTRY.</i>
HARVEST SPEARS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Harvest Spears appeals his convictions for domestic violence and violating a protection order. We conclude that his assignments of error do not have merit, so we affirm the judgment of the trial court.

In the case numbered B-1003691, Spears was indicted for one count of domestic violence for an incident that occurred on June 3, 2010. The state alleged that on that date, Spears had struck and bitten Velta McKee, who was the mother of his child. As a result of that incident, a protection order was issued against Spears that prohibited him from contacting or harming McKee. In the case numbered B-1005383, Spears was indicted for another count of domestic violence against McKee, violating the protection order, and arson. The jury found Spears guilty of two counts of domestic violence and one count of violating a protection order, and acquitted him of arson. The jury also found that Spears had been previously convicted of two counts of domestic violence. The trial court sentenced Spears to concurrent three-year sentences.

In his first assignment of error, Spears asserts that the state used its peremptory challenges during voir dire to exclude potential jurors on the basis of race in violation of *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). During voir dire, the state used two peremptory challenges to exclude two potential jurors who were African-American. When challenged by defense counsel, the state indicated nondiscriminatory reasons for dismissing the jurors. The trial court concluded that there was not discriminatory intent in the state's challenges. Having reviewed the record, we cannot conclude that the trial court's finding was clearly erroneous. *See State v. Phelps*, 1st Dist. No. C-100096, 2011-Ohio-3144, ¶ 17-23, citing *State v. Hernandez*, 63 Ohio St.3d 577, 583, 589 N.E.2d 1310 (1992). The first assignment of error is overruled.

In his second assignment of error, Spears asserts that the trial court erred when it admitted hearsay testimony. Spears first contends that the police officer who responded to the June 3 incident should not have been permitted to testify about statements allegedly made to him by McKee. We conclude that the trial court properly admitted the statements as excited utterances. *See Evid.R. 803(2)*. Spears further contends that McKee's statements to the police officer about other times in the past that Spears had allegedly struck and bitten her were inadmissible evidence of prior acts. But the evidence of the prior acts of violence by Spears against McKee was admissible to demonstrate his intent. *See Evid.R. 404(B); State v. Blonski*, 125 Ohio App.3d 103, 113, 707 N.E.2d 1168 (1997).

Spears also argues that McKee's friend, Yolanda Frazier, should not have been permitted to testify about Spears's reputation in the community as the father of McKee's child. The testimony was admissible under *Evid.R. 803(19)*. Any question of Frazier's credibility was for the jury to determine. We conclude that the trial court did not abuse its discretion in allowing the testimony. The second assignment of error is overruled.

Spears's third assignment of error is that the trial court erred by not properly instructing the jury. Spears contends that the trial court did not instruct the jury that it could consider his prior convictions for domestic violence only for the purpose of determining the enhancement to the domestic violence charges. But the trial court did so instruct the jury. The third assignment of error is overruled.

The fourth assignment of error is that Spears's convictions were not supported by sufficient evidence and were against the manifest weight of the evidence. We conclude that the state presented sufficient evidence of each of the offenses for which Spears was convicted. *See State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E2d 541. And having reviewed the record, we cannot say that the jury lost its way and created such a manifest miscarriage of justice that we must reverse his convictions and order a new trial. *Id.* at 387. The fourth assignment of error is overruled.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the clerk:

Enter upon the journal of the court on January 27, 2012

per order of the court _____.
Presiding Judge